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REMARKS

This Supplemental Amendment is submitted in response to the Office Action mailed September 2, 2005, the Examiner interview of December 14, 2005, and the Interview Summary mailed December 19, 2005.

Claims 1, 13, 26, 46, and 48 are currently being amended. Forty-one claims remain pending in the application: Claims 1-11 and 13-38 and 46-49. Reconsideration of claims 1-11 and 13-38 and 46-49 in view of the amendments above and remarks below is respectfully requested.

Written Statement Regarding Substance of 12/14/2005 Interview
per 37 CFR 1.133(b)

Applicants extend their appreciation for the opportunity to discuss the pending claims in the present application with Examiner Alissa Hoey in the telephone interview that occurred on December 14, 2005, at 2:00 p.m. EST. Those participating in the interview were Randuz Romay, attorney of record Richard Wawrzyniak, agent of record Julie Hopper, and Examiner Hoey. In accordance with the requirements of 37 CFR 1.133(b), and the Manual of Patent Examining Procedure (MPEP) § 713.04, Applicants provide the following written statement of the reasons presented at the interview as warranting favorable action.

No exhibits were shown or discussed. The claims that were discussed were independent claims 1, 13, 26, 46, and 48. While dependent claims 19 and 32 were briefly discussed, the dependent claims were not discussed in detail. The prior art discussed was US Patent No. 1,314,356 of Nordblad (herein the '356 patent).

With regard to the '356 patent, the general thrust of

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Applicants' argument was that the present application claims toe sections separated by trough regions and joined by nested, overlapping material portions only at the apex of each trough region, whereas the '356 patent teaches toe sections joined by overlapping material along substantially the entire length of each toe section (i.e. the overlapping portion of the toe sections is not limited to the apex).

Regarding proposed amendments that were discussed, the Examiner suggested striking the word "only" from the independent claims. While the Examiner indicated that the subject limitation including the word "only" could possibly overcome the rejection based on the '356 patent, the Examiner indicated that she did not believe the word "only" was supported by Applicants' specification. The Examiner also suggested amending the specification to indicate the location of the apex shown in Figure 3 of the application as originally filed.

Further discussed was a proposed amendment to the independent claims to recite that the trough regions "keep the toes separate to prevent the toes from rubbing", which language comes directly from Applicants' specification. (See Applicants' specification, page 10, line 15). Applicants pointed out that the toe portions disclosed in the '356 patent are not separate because they are designed for "overlapping toes"¹ and not to "prevent[] the toes from rubbing."² While the Examiner indicated that such amendment could possibly overcome the rejection based on the '356 patent, she indicated that she would need to review the final version of any such amendment, and therefore, no agreement was reached during the interview.

¹ See column 2, lines 55-64 of the '356 patent

² See page 10, line 15 of the present application

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Examiner's Interview Summary

Applicants received the Examiner's Interview Summary mailed on 12/19/2005. Applicants agree that an amendment to the independent claims was addressed (as discussed hereinabove). However, Applicants note that the Examiner's comments in the Interview Summary with regard to claims 19 and 32 were not expressed in the Examiner Interview. Although claims 19 and 32 were briefly discussed, they were not fully discussed in the Examiner Interview. Further, Applicants respectfully disagree with the Examiner's comments in the Interview Summary with regard to dependent claims 19 and 32 as discussed hereinbelow in section 2 of this paper.

Amendment to the Specification

In accordance with the Examiner's suggestion during the 12/14/05 interview, Applicants have amended the specification to indicate the location of the apex shown in Figure 3 of the application. Support for the amendment to the specification is found at least at Figure 3 as well as the second paragraph on page 10 and the first paragraph on page 11 in the application as originally filed.

Claim Rejection under 35 USC § 102

1. Claims 13, 22, 26, and 35 stand rejected under 35 USC 102(b) as being anticipated by US Patent No. 1,314,356 of Nordblad (the '356 patent). Applicants respectfully traverse these rejections.

Further to the Examiner Interview of 12/14/05, Applicants have amended independent claims 13 and 26 to recite that the toe sections are separated by trough regions that "keep the toes separate to prevent the toes from rubbing". This amendment is

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supported by Applicants' specification at page 10, line 15.
Claims 1, 46, and 49 have been amended in a similar manner.

As Applicant pointed out in the Examiner Interview, the '356 patent does not teach the use of separated toe sections to keep the toes separate in order to prevent rubbing. In fact, the '356 patent is specifically designed for "overlapping toes".³ This is illustrated in the figures of the '356 patent which shows the toe pockets 2 overlapping along substantially their entire length. Such overlapping is quite different than having the toe sections be separated by trough regions that "keep the toes separate to prevent the toes from rubbing", as is now recited in Applicants' amended independent claims 13 and 26.

As Applicants pointed out in their last response, the '356 patent specifically teaches that the toe pockets overlap along the length of the stocking such that the stocking may be "applied to a foot having overlapping toes, that no distortion or twisting of the toe pockets will result, the fabric retaining its natural form."⁴ In contrast, Applicants' specification indicates that the nested, overlapping material portions are useful for "[eliminating] the uncomfortable lumpy feeling between the toes common to toe socks of the past."⁵ Thus, it is important for Applicants' sock not to have toe pockets that overlap each other along most of the entire length of the toe pockets in order to eliminate the uncomfortable lumpy feeling between the toes. As such, Applicants' toe sections are separated by trough regions that keep the toes separate to prevent the toes from rubbing, as is now recited in Applicants' independent claims.

The claims as amended are not anticipated by the '356

³ See Column 2, lines 55-64 of the '356 patent

⁴ See column 2, lines 55 to 77 of the '356 patent

⁵ See page 10, lines 13 to 15 of the pending application

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application because each and every limitation of the claimed invention is not disclosed by the '356 application. Specifically, the pending claims are explicitly directed to a toe sock having toe sections that are separated by trough regions that keep the toes separate to prevent the toes from rubbing. In contrast, the '356 patent seeks to keep the toes together in an overlapping fashion without regard to rubbing between the toes.

Thus, Applicants respectfully submit that claims 13 and 26 are now in condition for allowance. Because claims 22 and 35 depend from claims 13 and 26, Applicants request that the present rejection be withdrawn from each of claims 13, 22, 26, and 35.

Claim Rejections under 35 USC § 103

2. Claims 19, 20, 32, and 33 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad. Applicants respectfully traverse these rejections.

The Examiner concedes that the '356 patent does not disclose a heel section having a "generally bilaterally symmetric trapezoidal shape" as specified in claims 19, 20, 32, and 33 of the pending application. The Examiner further asserts that it would have been obvious to modify the stocking of the '356 patent to include a "generally bilaterally symmetric trapezoidal shape" because Applicant has not disclosed that such a heel "provides an advantage is [sic] used for a particular purpose, or solves a stated problem."⁶ However, Applicant, in reference to the heel, discloses, "This construction provides an anatomic, accurately sized, antislipping, good form fit to the natural shape of the wearer's heel, preventing the heel 34 of

⁶ See page 4 of the OA mailed September 2, 2005
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the sock from bunching up, slipping out of place, stretching, or rotating, preventing chaffing and blistering."⁷ Thus, Applicants have specifically disclosed several purposes and advantages for a generally bilaterally symmetric trapezoidal shaped heel.

The Examiner commented in the Interview Summary mailed 12/19/2005 that because "as long as the sock has a heel portion the specific configuration is not essential to the practice of the invention."⁸ Applicants agree that the specific configuration of the heel portion is not necessarily essential to the practice of all embodiments of the invention. For example, it is contemplated that various configurations of heel portions may be utilized with the invention claimed in the independent claims. However, with regard to dependent claims 19 and 32, the recited configuration of the heel portion is essential to those particular claims **because the limitation appears in the language of the claim**. That is, claims 19 and 32 are limited by the recited configuration of the heel portion. As such, the recited limitation regarding the configuration of the heel portion must be shown in a prior art reference in order to establish a *prima facie* case of obviousness of those claims. (See Section 2143 of the Manual of Patenting Examining Procedure (MPEP)).

Therefore, because the '356 patent does not disclose a "heel section [having] a generally bilaterally symmetric trapezoidal shape", a *prima facie* case of obviousness of claims 19 and 32 has not been established and the rejections should be withdrawn.

In addition, the rejections of claims 19, 20, 32, and 33 should be withdrawn for at least the same reasons provided above

⁷ See page 8, lines 19 to 26 of the pending application

⁸ See page 3 of the Examiner's Interview Summary mailed 12/19/2005
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(in Section One) for their respective independent claims by virtue of their dependency thereon.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 19, 20, 32, and 33.

3. Claims 14, 15, 17, 18, 27, 28, 30, and 31 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 5,555,565 of Gallagher (herein the '565 patent). Applicants respectfully traverse these rejections.

Claims 14, 15, 17, 18, 27, 28, 30, and 31 are patentable over the '356 patent and the '565 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '565 patent.

With regard to claim 15 and 28, the Examiner asserts that the '565 patent "teaches the sock including an interior and exterior portion including a greater or equal amount of hydrophobic fiber material than the exterior portion."⁹ However, there is no mention in the '565 patent of a sock having variable hydrophobic fiber amounts according to the inner or outer portions of the sock. The text which the Examiner points to, i.e. column 3, lines 3 to 44, discloses the use of a "reversed terry nap construction" for providing "a smooth fit next to a skin."¹⁰ Thus, the '565 patent provides that the same fiber is used on the interior and exterior of the sock, the only difference being the texture of the fiber in the interior versus the exterior of the sock. As such, the rejections of claims 15

⁹ See page 5 of the OA mailed September 2, 2005

¹⁰ See column 3, lines 33 to 37 of the '565 patent
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and 28 should be withdrawn.

With regard to claims 18 and 31, the Examiner concedes that neither the '356 nor the '565 patents teach a hydrophobic fiber material having "at least one of a tetra-channeled and hollow-core configuration." The Examiner asserts that modifying the sock of the '356 patent and the '565 patent with tetra-channels having a hollow-core configuration would have been an obvious choice.¹¹ As disclosed in the pending application, hollow-core fibers are useful for trapping warm air in the hollow-core for insulating the foot of the wearer.¹² Neither the '356 patent nor the '565 patent appreciates the use of hollow-core fibers for insulation purposes. In fact, the '565 patent teaches away from the use of a **hollow-core fiber** for the use of insulation and instead discloses the use of a **"high density reversed terry knit."**¹³ The use of hollow-core fiber advantageously reduces bulk of the sock as opposed to the high density reversed terry knit taught by the '565 patent. As such, the rejections of claims 18 and 31 should be withdrawn.

In addition, the rejections of claims 14, 15, 17, 18, 27, 28, 30, and 31 should be withdrawn for at least the same reasons provided above (in Section One) for their respective independent claims by virtue of their dependency thereon.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 15, 17, 18, 27, 28, 30, and 31.

¹¹ See page 5 of the OA mailed September 2, 2005

¹² See page 5, lines 22 to 23 of the pending application

¹³ See column 4, lines 9 to 10 of the '565 patent

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4. Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren (herein the '007 patent). Applicants respectfully traverse these rejections.

Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 are patentable over the '356 patent and the '007 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '007 patent.

Namely, the rejections of claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 should be withdrawn for at least the same reasons provided above (in Section One) for their respective independent claims by virtue of their dependency thereon.

Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37.

5. Claims 25 and 38 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren, and further in view of US Patent No. 4,958,507 of Allaire et al (herein the '507 patent). Applicants respectfully traverse these rejections.

Claims 25 and 38 are patentable over the combination of the '356 patent, the '007 patent, and the '507 patent because each and every limitation of the claimed invention is not taught by the combination of the three patents.

Namely, the rejections of claims 25 and 38 should be withdrawn for at least the same reasons provided above (in Section One) for their respective independent claims by virtue of their dependency thereon.

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Thus, for at least the reasons presented above, as well as the arguments set forth in section one of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 25 and 38.

Claims Withdrawn by the Examiner

Claims 1, 46, and 48 have been amended to place them in condition for allowance. Although the Examiner has indicated that claims 1, 46, and 48 have been withdrawn from consideration, Applicants believe that claim 13 is generic to these claims, thus, have amended the claims to expedite issuance of all of claims 1-11 and 13-38 and 46-49.

No Fees Believed to be Due

No fees are believed to be due to file this Supplemental Amendment. However, if any fees are due, the director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 06-1135.

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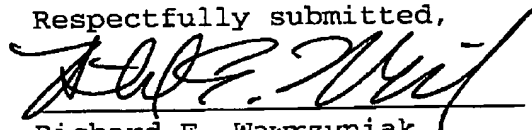
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CONCLUSION

Applicants submit that the amendments and remarks provided herein place the pending claims in condition for allowance, including claims 1-11 and 46-49 which the Examiner has indicated are withdrawn from the application. Therefore, a Notice of Allowance is respectfully requested. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Date: 1/13/06

Respectfully submitted,



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